

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

TRAVIS MCARTHUR ALDRIDGE,

Petitioner,

v.

**Civil Action No. 3:10CV115
Crim. Action No. 3:08CR36
(BAILEY)**

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Local Rule, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Kaull filed his R & R on December 22, 2010 [Crim. Doc. 78 / Civ. Doc. 5]. In that filing, the magistrate judge recommended that this Court dismiss this § 2255 petition [Crim. Doc. 66 / Civ. Doc. 1] with prejudice.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v.***

Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaull's R & R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on December 27, 2010. See Crim. Doc. 79. To date, no objections have been filed. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the record, it is the opinion of this Court that the magistrate judge's **Report and Recommendation [Crim. Doc. 78 / Civ. Doc. 5]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **DENIES** and **DISMISSES WITH PREJUDICE** the petitioner's § 2255 petition **[Crim. Doc. 66 / Civ. Doc. 1]** as untimely. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk shall enter judgment in favor of the respondent.

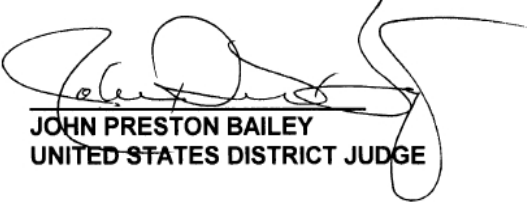
Pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court **DECLINES** to issue a certificate of appealability as the petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); **Miller-El v. Cockrell**, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong (citing **Slack v. McDaniel**, 529 U.S. 473, 484 (2000))).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and

to mail a copy to the *pro se* petitioner.

DATED: January 19, 2011.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE